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IN THE

Supreme Court of the United States

October Term, 1967

No. 1200

DIANA KEARNY POWELL,

Petitioner,

v.

COMMITTEE ON ADMISSIONS AND GRIEVANCES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DIANA KEARNY POWELL,
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Petitioner pro se

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for

the District of Columbia Circuit entered December 22, 1967, affirming a judgment of the United States District Court for the District of Columbia entered June 26, 1967.

OPINIONS BELOW

Judgment was rendered without opinion in the United States Court of Appeals for the District of Columbia Circuit on December 22, 1967, and is not reported.

Judgment in the United States District Court for the District of Columbia was entered without opinion June 26, 1967, and is unreported.

The principal related opinion previously rendered is *Powell v. Committee on Admissions and Grievances,* reported at 87 S. Ct. 1487, 386 U.S. 1035.

Three related cases are now pending in this Court: *In the Matter of Disbarment of Diana Kearny Powell,* Misc. No. 882 in this Court, Answer duly filed January 17, 1968 to Rule to Show Cause served November 6,, 1967 (date for filing answer extended to January 20, 1968); Petition for Writ of Certiorari filed December 29, 1967, *In the Matter of Diana Kearny Powell,* No. 974, seeking review of Order of Disbarment in the United States Court of Appeals for the District of Columbia Circuit; and *Powell v. National Savings and Trust Company,* Petition for Writ of Certiorari No. 1033 seeking review of affirmance of a judgment based on fraud, which is the fraud shown by Petitioner Diana Kearny Powell in her Complaint addressed to the Attorney General involving collaboration by two judges, which was the subject of disbarment in the District Court, from which followed disbarment in the Court of Appeals and the Rule to

Show Cause. *Powell v. Katzenbach,* 123 U.S. App. D.C. 250, 356 F. 2d 234, cert. denied 384 U.S. 906, rehearing denied 384 U.S. 967.

JURISDICTION

Review is sought of a judgment of the United States Court of Appeals for the District of Columbia Circuit, entered December 22, 1967. (a-1) Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) upon Constitutional and common law grounds and the supervisory power of this Court over United States Courts, which grounds were raised at all stages of the proceeding, in this and related cases, and have not been answered or explained in either the rulings of the Court or opposing pleadings of Respondent.

QUESTIONS PRESENTED

The questions presented are:

1. Does the supervisory power of this Court over United States Courts extend to the duty of reversal of arbitrary denial of reinstatement after disbarment, the disbarment disclaiming *in toto* the existence of extensive substantial evidence consisting of judicially noticed court records and detailed analysis submitted in defense?

2. Does this Court have the obligation to reverse a judgment of disbarment entered by a United States District Court, unsustained by evidence and clearly the result of bias, which

violated rights of free petition to the Government for redress of wrongs, and of due process and equal protection of the law, preserved by Amendments One, Five, and Nine of the Constitution?

CONSTITUTIONAL AMENDMENTS

Constitution of the United States, Amendment 1:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 5:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due proc ess of law, nor shall private property be taken for public use, without just compensation.

STATEMENT OF CASE

Review is sought of affirmance by the United States Court of Appeals for the District of Columbia Circuit (1a) of a final

Order of the United States District Court for the District of Columbia entered June 26, 1967, denying reinstatement after disbarment. (r-10). Summary dismissal of the Motion for Reinstatement was preceded by evasive answers to Requests for Admissions and Interrogatories. (r-6-10). Petitioner calls attention to the fact that the Order denying reinstatement was simultaneous with an attempt on her life by an unknown assaillant.

As grounds for review, Petitioner represents that the right to petition the Government for redress of wrongs, preserved by Constitutional Amendment, has been violated (p. 4) and that she has been denied a fair and impartial trial, equal protection of the law, and due process of law, guaranteed by the Constitution.

Petitioner was disbarred upon an arbitrary finding of a three-judge District Court which held that a pleading filed by respondent in the disbarment, Diana Kearny Powell, made false, scandalous statements concerning two judges, without justification or foundation in fact, and that these statements were detrimental to the proper administration of justice. The pleading involved was a Complaint in the nature of *mandamus* addressed to the Attorney General, seeking criminal prosecution for embezzlement and fraud against a bank, and certain lawyers, and naming the judges as conniving in the fraud. Involvement of the judges in the conspiracy rested entirely on court records, the authenticity of which were not in dispute. No testimony or evidence was presented at the disbarment proceeding to rebut the documentation and analysis presented in defense to show the solid foundation of the complaint against the judges. Dismissal of the Complaint was specified on appeal to be upon the discretionary nature of the office of Attorney General, and not upon lack of grounds for the complaint, which never was raised

as an issue in *Powell v. Katzenbach*, 123 U.S. App. D.C. 250, 356 F. 2d 234, cert. denied 384 U.S. 906, rehearing denied 384 U.S. 967.

SUMMARY OF ARGUMENT

1. This Court has wide supervisory control over United States Courts.

2. This Court has an obligation to reverse this disbarment that violates basic rights of petition and due process:

(a) This Court has the obligation to protect the right of any citizen to seek the protection of the Government from crime. This is a basic right, and is specifically guaranteed by Amendment One of the Constitution. It is particularly the duty of this Court to guard against the use of disbarment as a tool to prevent the exercise of the right of petition.

(b) This Court has the obligation to reverse disbarment that could not have been effected except in a spirit of prejudice and disregard of the record, in violation of constitutional rights of due process and equal protection of the law, amounting to abuse of discretion.

ARGUMENT

I.

THIS COURT HAS WIDE SUPERVISORY CONTROL OVER UNITED STATES COURTS.

Petitioner's right to reinstatement is as basic as her right to practice law without harrassment: She was deprived of that right unlawfully and in violation of basic rights by the United States District Court for the District of Columbia, and petitioned for reinstatement as a matter of right. (r-1) This motion was perfunctorily denied, and on appeal, denial of reinstatement was affirmed, equally perfunctorily, notwithstanding a plain showing of error in the disbarment. (a-1) Freedom of members of the Bar to present complaints in appropriate proceedings is fundamental to our system of justice. Without freedom to exercise that right by members of the Bar, our courts would cease to function as agencies in the administration of justice, and would become arms of dictatorship. This Court, as the Constitutional Court under which all others function, has a particular obligation to preserve the freedom of the Bar from duress in the form of disbarment. *Brotherhood of R. R. Trainmen v. Virginia, ex rel. Virginia State Bar* (Va. 1964), 84 S. Ct. 1113, 377 U.S. 1, 12 L. Ed. 2d 89, rehearing denied 84 S. Ct. 1625, 377 U.S. 960, 12 L. Ed. 2d 505; Constitution of the United States, Article III Secs. 1, 2. See also *In the Matter of Diana Kearny Powell,* No. 974, now pending, and *In the Matter of Diana Kearny Powell,* Misc. 882, now pending.

II.

THIS COURT HAS THE OBLIGATION TO REVERSE THIS DISBARMENT THAT VIOLATES BASIC RIGHTS OF PETITION AND DUE PROCESS.

Petitioner is entitled to continue in the practice of law during good behavior. She had been deprived of that right upon the accusations, unsupported by evidence, that she made false charges of corruption against two judges. Petitioner has not relied on her own statement to support the accusation she made, but has relied throughout the proceedings upon the unrefuted records of the Court, which she presented in rebuttal of the accusations against her that her pleading was false and without foundation. The record speaks loud and clear that it is the charges against petitioner which are totally false and without foundation in the record, because it shows without possibility of equivocation or doubt that the charges against Petitioner were made for the purpose of diverting attention from, and concealing, the misconduct of judges in misstating the facts and law to sustain fraud committed by a bank acting in its capacity as trustee. It is hard to conceive of conduct which would tend more to bring the Court into disrepute than that of using disbarment to suppress exposure of corruption in the Court.

In the case most heavily relied on by the Committee, *Duke v. Committee on Grievances of the Supreme Court of D. C.* (1936), 65 App. D.C. 284, 82 F. 2d 890, cert. denied, 56 S. Ct. 751, 298 U.S. 662, 80 L. Ed. 1387, this Court limited the question in a disbarment proceeding to whether the respondent was

a fit person to remain a member of the Bar of the Court, stating:

> . . . He [the attorney] has no right to attempt to cast foul and unfounded aspersions upon the character and conduct of his brother members of the bar, any more than he has to asperse and defame, without justification, the character and motives of the judge upon the bench. Especially he is without warrant in an attempt to make the records of the courts, from the lowest to the highest, vehicles of malicious scandal and libel of any member of the bar. Upon any other principle for the government of the bar, it would be impossible to conduct business with decorum and with due regard to the orderly proprieties of a court of justice.

The words of the Court in the *Duke* case are particularly appropriate as applied to the false accusations against Petitioner:

> . . . To tolerate such a precedent as this case would make would subject any attorney, in the performance of his duty, and upon any unfounded pretense supposed to be available to his adversary, to the most unjust and outrageous imputations upon his character and conduct. The bar is entitled to be protected against such abuse of privileges by any of his brother members.

In *Ex parte Wall*, 107 U.S. 265, 27 L. Ed. 552, 2 S. Ct. 569, this Court held:

> . . . Disbarment is the extreme measure of discipline and should be resorted to only in cases where the lawyer demonstrates an attitude or course of conduct wholly inconsistent with approved professional standards. To disbar, it should be clear that he is one who should never be at the bar . . .

Again, in *Ex parte Bradley*, 7 Wall (U.S.) 364, 19 L. Ed. 214, this Court held:

> In no case has it been considered that the power to disbar is an arbitrary or despotic one to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility. A sound judicial discretion controls the exercise of the power so that the right and independence of the bar will be scrupulously guarded and maintained by the court to the same extent as it maintains the rights and dignity of the court itself.

(a) This Court has the obligation to protect the right of any citizen to seek the protection of the Government from crime. This is a basic right, and is specifically guaranteed by Amendment One of the Constitution. It is particularly the duty of this Court to guard against the use of disbarment as a tool to prevent the exercise of the right of petition.

The right of petition, like the right of free speech and freedom of the press enumerated in the same Amendment One

to the Constitution, connotes the duty to inform proper authorities of crime and corruption that endanger orderly Government. In *Near v. Minnesota*, 283 U.S. 697, 73 L. Ed. 1357, 51 S. Ct. R. 625 (1931), the closely related right of freedom of the press, was upheld by this Court in these words:

> . . . the opportunities for malfeasance and corruption have multiplied, crime has grown to such serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasize the need of a vigilant and courageous press . . .

Petitioner submits that it is even more the right and duty of the individual who is the victim of a crime of conspiracy and corruption to report it to Government, and to expect, as a matter of right, the protection of Government from retaliation and vindictiveness of those caught red-handed. Without this right and protection, no powerful criminal could ever be apprehended or effectively charged with crime. The First Amendment protects the right to tell the truth and comment fairly on facts. *Sweeney v. Schenectady Union Publishing Co.* (C.C.A. N.Y. 1941), 122 F. 2d 288, affd. 62 S. Ct. 1031, 316 U.S. 642, 86 L. Ed. 1727, rehearing denied 62 S. Ct. 1266, 316 U.S. 710, 86 L. Ed. 1776.

The device of disbarment to suppress complaint of a crime is particularly vicious, because it undermines the integrity of the legal process itself as an effective defense for decent people against vice.

(b) This Court has the obligation to reverse disbarment that could not have been effected except in a spirit of prejudice and disregard of the record, in violation of Constitutional rights of due process and equal protection of the law, amounting to abuse of discretion.

Due process implies a decision predicated upon facts of record, and not upon unfounded conclusions, tainted by vindictiveness and bias, and unsupported by evidence. In the original disbarment proceeding, a prejudiced and implicated court swept aside extensive documentary evidence and analysis in detail of the facts, irrefutably written into the record, with a phrase inferring that the damning evidence was non-existent.

With the Motion for Reinstatement, Petitioner filed Requests for Admissions and Interrogatories designed to bring to light any evidence, or the lack of it, which the Committee claimed in support of its position. This was met with evasive answers. (r-6-10).

Such suppression of the evident purport of the record to reach a judgment patently without foundation in the facts is denial of due process, that governs the judicial function, *Hovey v. Elliott* (N.Y. 1897), 17 S. Ct. 841, 167 U.S. 409, 42 L. Ed. 215. Due process means that judicial judgments are to be predicated on the record and are not to be expressions of the idiosymcrasies of merely personal judgment. *Leland v. State of Oregon,* 72 S. Ct. 1002, 343 U.S. 790, 96 L. Ed. 1302, rehearing denied 73 S. Ct. 4, 344 U.S. 848, 97 L. Ed. 659 (U.S. Or. 1962). In *Holden v. Hardy,* 169 U.S. 366, 389, 42 L. Ed. 780, 790, 18 S. Ct. 383, citing *Galpin v. Page,* 18 Wall 350, 21 L. Ed. 959, this Court characterized a judgment which is not

based upon the facts or where the opportunity to be heard has not been afforded, lacks

> . . . all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered.

This right to due process extends to disbarment proceedings. *Dillon v. United States* (D.C. Or. 1964), 280 F. Supp. 487, reversed on other grounds, 346 F. 2d 633; *In re Bennethum,* (D. C. Del. 1961), 96 F. Supp. 541. Petitioner refers to and incorporates the argument presented in the related case, *In the Matter of Diana Kearny Powell,* No. 974, now pending in this Court.

CONCLUSION

WHEREFORE, Petitioner respectfully prays that Writ of Certiorari issue to the United States Court of Appeals for the District of Columbia Circuit for review of the Judgment affirming denial of Reinstatement of Petitioner to the Bar of the United States District Court for the District of Columbia;

That this Court exercise its power of supervision to remand the case and to order reinstatement as of right.

For such other and further relief as this Court deems proper.

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